

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

KERRIE BATCHELDER

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4
<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 5
<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 6

Incorporated or Principal Place of Business In This State

Incorporated and Principal Place of Business In Another State

Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/>	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/>	<input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 410 Agriculture	<input type="checkbox"/>	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	REAL PROPERTY	CIVIL RIGHTS	SOCIAL SECURITY	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	PRISONER PETITIONS	HABEAS CORPUS:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900Apeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights	IMMIGRATION	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C SECTION 1692

VI. CAUSE OF ACTION

Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation: _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/17/12

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 8257 Stephanie Ln., Bellevue, NE 68147

Address of Defendant: 507 Prudential Rd., Horsham, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
 Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
 Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
 Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
 Yes No

CIVIL: (Place ✓ in ONE CATEGORY ONLY)

A. Federal Question Cases:

- Indemnity Contract, Marine Contract, and All Other Contracts
- FELA
- Jones Act-Personal Injury
- Antitrust
- Patent
- Labor-Management Relations
- Civil Rights
- Habeas Corpus
- Securities Act(s) Cases
- Social Security Review Cases

11. All other Federal Question Cases

(Please specify) 15 U.S.C. § 1692

B. Diversity Jurisdiction Cases:

- Insurance Contract and Other Contracts
- Airplane Personal Injury
- Assault, Defamation
- Marine Personal Injury
- Motor Vehicle Personal Injury
- Other Personal Injury (Please specify)
- Products Liability
- Products Liability — Asbestos
- All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: 10/17/12

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/17/12

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

KERRIE BATCHELDER : CIVIL ACTION
: :
: v. : :
: : NO.
NCO FINANCIAL SYSTEMS, INC. : :
: :

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

10/17/12
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiff, Kerrie Batchelder
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMPLAINT

KERRIE BATCHELDER (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., allege the following against NCO FINANCIAL SYSTEMS, INC., (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant maintains its corporate headquarters in the Commonwealth of Pennsylvania; therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. §1391(b)(1).

PARTIES

5. Plaintiff is a natural person residing in Bellevue, Nebraska 68147.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. Alternatively, Plaintiff is a person granted a cause of action under the FDCPA.

See 15 U.S.C. §1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, Pennsylvania 19044.

9. Defendant collects, and attempts to collect, consumer debts incurred, or alleged to have been incurred, for personal, family or household purposes on behalf of creditors and debt buyers using the U.S. Mail, telephone and/or internet.

10. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiffs in an attempt to collect a debt.

11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

12. At all relevant times, Defendant was attempting to collect an alleged consumer debt and contacted Plaintiff in its attempts to collect the debt.

13. Upon information and belief, the alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

14. Plaintiff never incurred any debts in connection with business or commercial activities and, therefore, the alleged debt, if truly an obligation owed by her, could have only arisen from a financial obligation for primarily personal, family or household purposes.

1 15. Beginning in April 2012, and continuing through July 9, 2012, Defendant
2 continuously and repeatedly contacted Plaintiff on her cellular telephone in its attempt to collect
3 a debt.

4 16. During the relevant period, Defendant contacted Plaintiff, on average, three (3) to
5 eight (8) times a day, in attempts to collect the alleged debt.

6 17. As a result, Plaintiff received more than ten (10) collection calls a week.

7 18. Many of Defendant's collection calls originated from telephone numbers that
8 appeared as "unknown" on her caller-id.

9 19. Plaintiff knew that these "unknown" telephone numbers belonged to Defendant
10 because when she would answer the calls, or retrieve the voicemail messages, she was greeted by
11 an automated, pre-recorded message identifying the caller as "NCO Financial."

13 20. For example, many of the voicemail messages Plaintiff received from Defendant
14 stated the following:

15 This is NCO Financial calling for Kerrie M. Batchelder. If this is not Kerrie M.
16 Batchelder, please hang up. If this is, we are attempting to collect a debt. This is
17 NCO Financial calling. This is a very important business matter. Please return
our call to...*(sic)*.

18 21. Defendant was not calling about a business matter. Defendant's statements that it
19 was were misleading, false, and deceptive.

20 22. Further, on the occasions when Plaintiff answered Defendant's collection calls,
21 Defendant would hang-up or disconnect the phone call, making it impossible for Plaintiff to
22 speak with a live person.

23 23. Despite the volume of collection calls, Plaintiff was never able to speak with a
24 live-collector.

24. Upon information and belief, Defendant's collection methods were unfair and unconscionable as Defendant never provided Plaintiff with an opportunity to speak with a live debt collector, as it repeatedly hung up the telephone on her every time she answered one of its calls.

25. Further, Defendant never provided Plaintiff with any information regarding the debt, such as the name of the creditor or the amount of the debt.

26. In fact, within five (5) days of Defendant's first communication with Plaintiff in April 2012, Defendant failed to send Plaintiff a written notice notifying her of her rights to dispute the debt and/or request verification of the debt, as well as providing her with the name of the creditor and the amount of the debt.

27. As of the current date, Plaintiff has never received written notification about the alleged debt from Defendant.

28. Plaintiff does not have any information regarding the underlying debt.

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

COUNT I

29. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §§1692d and 1692d(5).

- a. A debt collector violates §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.
 - b. A debt collector violates §1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the

called number.

c. Here, Defendant violated §§1692d and 1692d(5) of the FDCPA when it called Plaintiff three (3) to eight (8) times a day, resulting at times in more than ten (10) calls in a single week.

COUNT II

30. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §§1692e and 1692e(10).

- a. A debt collector violates §1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of any debt.

b. A debt collector violates §1692e(10) of the FDCPA by using false representations or deceptive means to collect or attempt to collect any debt.

c. Here, Defendant violated §§1692e and 1692e(10) of the FDCPA by deceptively attempting to collect a payment for the alleged debt without providing Plaintiff with any information about the debt, such as who the original creditor is, or the amount of the debt, as well as stating that it was calling about a business matter.

COUNT III

31. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §1692f.

d. A debt collector violates §1692f of the FDCPA by using any unfair or unconscionable means to collect or attempt to collect any debt.

e. Here, Defendant's conduct violated §1692f of the FDCPA by using unfair and

unconscionable means in connection with the collection of the debt, by hanging up the telephone on Plaintiff when she answered its calls, thus failing to provide her with an option to speak with a live debt collector, in efforts to obtain information about the debt.

COUNT IV

32. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §1692g.

- a. A debt collector violates §1692g(a) of the FDCPA by failing to send to the consumer, within five days after its initial communication with a consumer in connection with the collection of a debt, a written notice containing: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

1 b. Here, Defendant violated §1692g of the FDCPA by failing to send written
2 notification, within five (5) days after its initial communication with
3 Plaintiff, advising Plaintiff of her rights to dispute the debt or request
4 verification of the debt or providing her with the name of the original creditor
5 and the amount of the debt.

6 WHEREFORE, Plaintiff, KERRIE BATCHELDER, respectfully prays for a judgment as
7 follows:

- 8 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
9 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
10 15 U.S.C. § 1692k(a)(2)(A);
11 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
12 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
13 d. Any other relief deemed appropriate by this Honorable Court

14 **DEMAND FOR JURY TRIAL**

15 PLEASE TAKE NOTICE that Plaintiff, KERRIE BATCHELDER, demands a jury trial
16 in this case.

17 RESPECTFULLY SUBMITTED,

18 DATED: 10/17/2012

19 KIMMEL & SILVERMAN, P.C.

20 By: /s/ Craig Thor Kimmel
21 CRAIG THOR KIMMEL
22 PA Attorney ID No. 57100
23 Kimmel & Silverman, P.C.
24 30 E. Butler Pike
25 Ambler, PA 19002
 Phone: (215) 540-8888 ext. 148
 Fax: (877) 788-2864
 Email: kimmel@creditlaw.com